

**BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Application of

Breeze Aviation Group, Inc.

for a certificate of public convenience and
necessity under 49 U.S.C. 41102 to engage
in interstate scheduled air transportation

Docket: DOT-OST-2020-0019

**INCORPORATED MOTION FOR LEAVE TO FILE REPLY TO ANSWER TO
PETITION FOR REVIEW OF STAFF ACTION
AND REPLY TO ANSWER TO PETITION**

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Date: June 28, 2021

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Docket: DOT-OST-2020-0019

**MOTION FOR LEAVE TO FILE REPLY TO ANSWER TO PETITION FOR
REVIEW OF STAFF ACTION IN SUPPORT OF PETITION**

Pursuant to sections 302.6 and 302.11 of the Department’s Rules of Practice, the Transport Workers Union of America, AFL-CIO (“TWU”), Transportation Trades Department, AFL-CIO and the Association of Flight Attendants—CWA (“AFA-CWA”) (collectively the “Labor Parties”), hereby move for leave to submit a further responsive document in the form of a Reply to the Answer of Breeze Aviation Group, Inc. (“Breeze”) in support of the AFA-CWA, the Transportation Trades Department, AFL-CIO and the TWU’s Petition for Review of Staff Action. Pursuant to section 302.6(c)(2) of the Department’s Rules of Practice, this Motion is incorporated into the Response to the Answer, the document for which admission is sought. In support of this Motion, the Labor Parties submit the following:

Pursuant to 14 C.F.R. § 385.33, there may be an answer to a petition for review of staff action, but the regulation does not specifically provide for further responsive DOT

documents. However, pursuant to 14 C.F.R. § 302.6(c), the Department will accept a further responsive document, such as a “reply to an answer,” where “...leave has been obtained from the DOT decisionmaker or, if applicable, the administrative law judge, on written motion and for good cause shown.”¹

On June 15, 2021, Breeze submitted its Answer to the Petition for Review of Staff Action and therein, Breeze suggests that it is outside of the Department’s jurisdiction to consider information in regard to Breeze’s compliance with certain applicable state and laws governing its operation as a business.²

Upon review of the Answer, there is a need by the Labor Parties to comprehensively address an important question of law in regard to Breeze’s assertion as to the Department’s jurisdiction and ability to consider certain information in a proceeding pursuant to 49 U.S.C. § 41102. In determining whether good cause has been established under 14 C.F.R. § 302.6(c), the Department has recognized “...the importance of allowing each party an opportunity to fully discuss important issues...”³ and has previously found good cause based on the grounds articulated by the Labor Parties in this Motion.⁴

¹ *Id.*

² Answer at 3.

³ IN THE MATTER OF: DELTA AIRLINES, INC. RESPONDENT, 2015 WL 848104 (Feb. 10, 2015) (Docket No. DOT-OST-2014-0229).

⁴ *Id.*

For the foregoing reasons, the Labor Parties respectfully request that the Department grant the Labor Parties' Motion for Leave and accept the Labor Parties Reply to Breeze's Answer to the Petition for Review of Staff Action.

Dated: June 28, 2021

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Mark Richard', is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of June, 2021, the foregoing Reply to Answer of Breeze Aviation Group, Inc. in Support of Petition for Review of Staff Action was submitted via email on the following:

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REPLY TO ANSWER TO PETITION FOR REVIEW OF STAFF ACTION

The Transport Workers Union of America, AFL-CIO (“TWU”), Transportation Trades Department, AFL-CIO and the Association of Flight Attendants (“AFA-CWA”) (jointly known as “the Labor Parties”), hereby submit this Reply to Breeze Aviation Group, Inc.’s (“Breeze”) Answer, in support of the Petition of the AFA-CWA, the Transportation Trades Department, AFL-CIO and the TWU’s for Review of Staff Action pursuant to 14 C.F.R. § 385.31.

The Labor Parties timely filed their Petition for Review on June 4, 2021, within ten (10) days of service of the Department of Transportation’s (the “Department”) May 25, 2021 order confirming its grant of Breeze’s application for a Certificate of Public Convenience and Necessity to engage in interstate scheduled air transportation of persons, property, and mail.¹ The Labor Parties did so in compliance with 14 CFR 385.30, *et seq.*, following Breeze’s public statements regarding its intent to hire its flight attendants solely

¹ORDER CONFIRMING ORAL ACTION AND REISSUING CERTIFICATE (May 25, 2021) (DOT-OST-2020-0019-0018).

from Utah Valley University's online program (the "UVU Program"), and after investigation into the little public information that was available on the UVU Program to date. It is undisputed that the Labor Parties represent a large number of flight attendants in the United States and have a substantial interest in ensuring Breeze's hiring practices comply with all applicable employment laws, including anti-discrimination laws.

In its Answer to the Petition, Breeze seems to suggest that information in regard to its compliance with applicable state and federal labor and employment law is entirely outside of the Department's jurisdiction to consider.² While it is true that Part 204 of the Department's regulations governing the provision of data to support a determination of fitness does not expressly require the submission of information in regard to a prospective air carrier's hiring and recruiting programs, it is likewise true that it is within the province of the Department to consider information in regard to a prospective air carrier's compliance with the federal and state laws that govern its business operations as part of the fitness and certification processes.³ It is not outside of the Department's authority to consider the issue of compliance with state and federal employment laws, especially because personnel issues and safety issues can be intertwined. Furthermore, hiring practices are a matter of public interest. Furthermore, the Department's review of Breeze's hiring practice will not prejudice Breeze, and Breeze's Certificate will remain effective pending any investigation.

² Answer at 3-5.

³ See 49 U.S.C. § 41102; see also Dep't of Transp., *How to Become a Certificated Air Carrier at 21*, Air Carrier Fitness Division, Office of the Secretary, U.S. Dep't of Transp. (Sept. 2012).

Accordingly, the Labor Parties request that Department grant their Petition for Review and investigate Breeze's hiring practices and require Breeze's to demonstrate compliance with all applicable employment laws.

I. The Labor Parties Demonstrated Good and Sufficient Cause For Not Participating in the Application Proceedings Prior to Filing the Petition for Review.

Breeze's partnership with UVU was labeled as both a work-study program and a referenced as a tuition reimbursement program in the media.⁴ Information on the program itself and how it will be administered was and is in the hands of Breeze, and the Labor Parties were limited to the information that was publicly available, the information contained in Breeze's Application, and any supplements to the same. As additional information became available, the Labor Parties became increasingly concerned that Breeze's focus on low-cost flights and its heavy or almost exclusive recruitment via the UVU Program would lead to noncompliance with applicable employment laws, including the Age Discrimination Act of 1967 ("ADEA") and Title VII of the Civil Rights Act ("Title VII"). Breeze's recruitment strategy also posed safety issues, as the entirety of its staff would be inexperienced flight attendants. The Labor Parties grew more concerned after Breeze publicly backed off of its earlier statements touting that it would revolutionize the airline industry with its plan to hire solely from UVU and began advertising for full and

⁴ See Genelle Pugmire, *Partnership between Breeze Airways-UVU ready to take off*, DAILY HERALD (April 1, 2021) ("Neeleman has not yet announced where his new airline will be flying to and from, but he did say he would be hiring 'a couple of hundred crew.' The reason he did the [UVU flight attendant] program this way is because there isn't one major hub that employees will fly out of."); see also Mary Schlagenstein, *New airline's plan for college kids as flight attendants gets pushback*, THE SEATTLE TIMES (May 7, 2021) ("The sole source of flight attendances for Neeleman's upstart Breeze Airways will be full-time, only students at Utah Valley University."); Thomas Pallini, *A new airline is defending its plan to use college students as cabin crew after blowback from US' largest flight attendant union*, BUSINESS INSIDER (May 14, 2021) ("Breeze intended for all of its flight attendants to be degree-seeking students. But lower than expected recruitment numbers have required the airline to open up regular positions with no requirements of being a student, airline spokesperson Gareth Edmonson-Jones confided to Insider.").

part-time flight attendant positions.⁵ These statements were made in May, only after AFA communicated its concerns to UVU on April 12, 2021.⁶ The inconsistent statements and the timing of the statements regarding hiring from other sources outside of UVU certainly raise concerns regarding Breeze's hiring practices and its commitment to hiring outside of the UVU Program. Had the Labor Parties interjected earlier in these proceedings, they would not have had sufficient information to support their Petition. That information is available now, and accordingly, the Petition is timely and should be considered by the Department.

Additionally, Breeze's Answer seems to suggest that once the Department performs its initial fitness review, Breeze will not be subject to any further review of its fitness to be an air carrier. This is simply not true. Not only is Breeze's compliance disposition relevant in the certification process, but also throughout its operations, including when proposing a change in operations, ownership, or management.⁷

II. Breeze's Likelihood of Compliance With Applicable Employment Laws is Within The Department's Jurisdiction.

As the Department's Air Carrier Fitness Division has stated, "[t]he purpose of evaluating compliance disposition is to assure that the company and the personnel running and controlling the company do and will abide by the laws, rules, and regulations governing the applicant's operations and that management will be diligent in maintaining safe operations."⁸ Although compliance is but one part of the Department's three-part test to

⁵ See Pallini, *supra* note 4.

⁶ See *id.*; see also Petition at Ex. A.

⁷ See 14 C.F.R. §§ 204.3-204.7.

⁸ Dep't of Transp., *supra* note 3; see also MOTION FOR LEAVE TO FILE UNAUTHORIZED PLEADING AND SUR-REPLY OF JETBLUE AIRWAYS CORPORATION IN OPPOSITION TO APPLICATION OF BLUE JET SP. Z O.O. FOR AN EXEMPTION AND AIR CARRIER PERMIT, Docket DOT-OST-2014-0026-0006 (Apr. 3, 2014) (arguing

determine the fitness of a company and compliance with federal and state law governing hiring practices may not be dispositive, it is not outside of the realm of factors that the Department must consider. Indeed, in conjunction with Breeze's Application, Breeze disclosed a civil action brought against it based upon a hiring decision it made.⁹ Likewise, Breeze disclosed, for the Department's consideration, a number "labor suits" that Azul, a relevant corporation, is a party to or the subject of.¹⁰

Furthermore, Breeze's citation in its Answer to the Department's September 10, 2001 Order in the Applications of Biz Jet Servs., Inc. and those decisions cited by Biz Jet Servs., Inc. is misplaced.¹¹ In Applications of Biz Jet Servs., Inc., the union opposing Biz Jet's applications raised an important issue in regard to Biz Jet's parent company's compliance with a collective bargaining agreement ("CBA") between the parent company and the union. The importance of the issue notwithstanding, the Department focused on the fact that the union opposing Biz Jet's applications did not specifically dispute or question the fitness of Biz Jet.¹² Unlike the union's opposition in Applications of Biz Jet Servs., Inc., in this matter, the opposition of the Labor Parties to the issuance of a certification to Breeze by way of a Petition for Review is based upon a question of Breeze's fitness in regard to its ability to comply with applicable state and federal law.

that applicant's refusal to submit to the jurisdiction of the U.S. courts in a trademark dispute reflects poorly on an applicant's compliance disposition).

⁹ ORDER TO SHOW CAUSE PROPOSING ISSUANCE OF CERTIFICATE OF AUTHORITY (Feb. 23, 2021) (DOT-OST-2020-0019), at 7-8 n.14

¹⁰ *Id.* at 8 n.17.

¹¹ Answer at 3 (citing ORDER TO SHOW CAUSE OF PROPOSING ISSUANCE OF CERTIFICATES (Sep. 10, 2001) (Docket Nos. DOT-OST-01-9880 & DOT-OST-01-9881, at 3).

¹² ORDER TO SHOW CAUSE OF PROPOSING ISSUANCE OF CERTIFICATES (Sep. 10, 2001) (Docket Nos. DOT-OST-01-9880 & DOT-OST-01-9881, at 2.

Similarly, in Joint Application of Trans World Airlines, Inc. and USAir, Inc., several unions objected to the transfer of Trans World Airlines' certificate to USAir, in part, because the unions wanted the Department to require USAir to offer employment to at least 70 Trans World Airlines pilots and 190 TWA flight attendants.¹³ There, the Department justified its decision not to impose any mandatory hiring requirements on USAir based on its policy "not to impose labor protective provisions unless they are necessary to prevent labor strife that would disrupt the national air transportation system or, due to special circumstances, to encourage fair wages and equitable working conditions."¹⁴ Breeze misstates the Department's precedent—not only are the Labor Parties' concerns regarding the UVU Program not related to labor protective provisions, but the Department has itself set out instances where it would impose labor protective provisions.¹⁵

Finally, in Petition of Air Lines Pilots Association, Int'l, also cited by the Department in Applications of Biz Jet Servs., Inc. and relied upon by Breeze in support of its Answer to the Petition, ALPA's primary concern was ongoing tension between Eastern Airlines' management and labor. ALPA's petition came on the tails of two extensive investigations by the Department and the FAA into the continuing fitness of Texas Air Corporation and its subsidiaries including Eastern and Continental Airlines.¹⁶ Upon conclusion and after the Department facilitated an agreement between Eastern's employees and management to address the Department's concern that the ongoing tension could

¹³ JOINT APPLICATION OF TRANS WORLD AIRLINES, INC. AND USAIR, INC. (May 1, 1992) (DOT Order No. 92-3-51), at 3.

¹⁴ *Id.* at 5.

¹⁵ *See id.* at 11-12.

¹⁶ *See generally* PETITION OF AIR LINE PILOTS ASSOCIATION, INT'L, ORDER DENYING PETITION (Dec. 14, 1988) (DOT Docket No. 45994; Order No. 88-12-30).

jeopardize airline safety, and in anticipation of the sale of the airline, ALPA filed its petition requesting that the Department institute a formal investigation into the continuing fitness of Eastern.¹⁷ The Department declined to do so, stating that involving itself in management disputes is outside of its authority to assess the continuing fitness of a carrier, ultimately finding that labor-management disputes are best “resolved by the parties themselves.”¹⁸ Here, the Labor Parties ask the Department for a review of Breeze’s hiring practices for compliance with all applicable employment laws in the face of Breeze’s own statements regarding its intent to hire solely or almost exclusively via the UVU Program.¹⁹

The Department has a history of considering labor and employment issues in determining whether to approve a carrier’s certificate, especially when, as is the case here, those issues are intertwined with safety issues and a matter of public interest. Accordingly, the Department should grant the Petition and conduct a review into Breeze’s hiring practices and require Breeze to demonstrate compliance with all applicable employment laws, including the ADEA and Title VII of the Civil Rights Act.

III. The Labor Parties Do Not Allege the UVU Program is a Federal Work Study Program.

While it was initially unclear whether the UVU Program was a Federal Work Study (“FWS”) program, the Labor Parties have not alleged that Breeze has violated the FWS program in their Petition.²⁰ The Labor Parties recognize that the UVU Program is a tuition-reimbursement program and does not implicate the federal student aid program or any of its regulations.

¹⁷ *Id.*

¹⁸ See Pallini, *supra* note 4.

¹⁹ Petition at 2.

²⁰ Answer at 6.

IV. The Department's Grant of the Petition for Review Will Not Prejudice Breeze and Breeze Will Continue Operations Uninterrupted Pending the Department's Review.

Breeze's contention that it will be prejudiced by the Department granting the Labor Parties' Petition and request for review of Breeze's hiring practices is without merit. Any review of the hiring practices and/or requests for information from Breeze regarding the same will not affect Breeze's ability to continue its operations and therefore, Breeze cannot demonstrate any prejudice from the Department granting the Petition.²¹

Conclusion

For the foregoing reasons, the Labor Parties respectfully request that the Labor Parties' Petition for Review of Staff Action be granted.

Dated: June 28, 2021

Respectfully submitted,

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²¹ See ORDER CONFIRMING ORAL ACTION AND REISSUING CERTIFICATE (May 25, 2021) (DOT-OST-2020-0019-0018), at 3; *see also* ORDER CONFIRMING ORAL ACTION AND REISSUING CERTIFICATE (Dec. 21, 2021) (DOT-OST-2005-22935), at 3, 3 n. 1 (confirming Department's review of new allegations raised after carrier was granted effective authority would continue despite carrier continuing to operating pending investigation).

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of June, 2021, the foregoing Reply to Answer of Breeze Aviation Group, Inc. in Support of Petition for Review of Staff Action was submitted via email on the following:

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